

# FEDERALISM, CONSTITUTIONALISM AND CONFLICT MANAGEMENT

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## **INTRODUCTION**

The idea of federalism as a tool for structural resolution of ethnic / religious / linguistic conflicts is old and still very popular. Several constitutions of the last generation are based on this assumption, implicitly or explicitly. This is also the basis for ongoing processes of constitution building in Asia, Africa and Europe.

Is the assumption that federalism can solve and prevent community conflicts correct? To what extent is federalism a tool for conflict management? What is the role of constitutionalism? Accumulated knowledge is there. However, among the many existing cases, some are successful, others have failed: what lessons can be learned from them? How should the topic be correctly approached?

## **THE VICIOUS CIRCLE OF OWNERSHIP**

In the still prevailing Westphalian approach, diversity-driven federalism (i. e. based on assumed ethnically, linguistically, religiously homogenous sub-state entities) is a sort of second-best statehood. Such a view, however, is often considered too much for the State and too little for the concerned groups. There is often disagreement about the final option.

Overall, such an approach proved to work well. Its strength lays a) its being a viable alternative to external self-determination (thus preventing secession), and b) in its ability to do so by addressing minority issues without derogating from the fundamental element of western constitutionalism: majority rule. It turns national minority groups into (potential) territorial majorities and this way it does

not need to derogate to the basic (and simplistic) principle of majority rule. This compromise is especially appealing and useful in post-conflict situations as it often represents the Columbus' egg: it allows to bring peace by sharing power and ownership and to postpone some fundamental issues that cannot be resolved when the situation is still tense (especially who has the final say on certain issues), waiting for more appropriate conditions for solving them.

However, when both the state (and the national majority) and the affected territory (and the national minority) see federalism as ownership over a territory, this normally leads to conflicts. If not initially, in the long run, as the experience of even the most successful cases of territorial accommodation proves. One may thus argue – as several governments like to do – that federalism is part of the problem rather than part of the solution.

### **THE CHALLENGE OF CONSTITUTIONALISM**

This is however where the essential element of constitutionalism comes in. Constitutionalism means using legal tools to limit power. Federalism is one of the most effective instruments to that effect. The mistake is not with federalism as such, but rather with its use for purposes that are not its core business. There is definitely a link between federalism and minority protection, but this needs to be channelled correctly by using the right instruments. Such instruments are provided by constitutionalism.

As to minority rights, the challenge is about overcoming decisions based on majority rule. Federalism is also part of those, as an instrument to deconcentrate power, but definitely not the only one, nor the chief one. Other are equally if not more effective in going beyond the numerical logic: power sharing in governments; quotas; personal autonomy; special procedures with qualified majorities, and the like.

Federalism as self-government for a specific minority group can be very useful especially in the aftermath of a conflict or as a means to stop it. There must however also be a vision for the post-conflict

situation. Such vision is essentially about the use of federalism for its own primary purpose: to be an instrument of good governance, targeting a territory as a whole. The more efficient overall governance is, the less likely it is that minority rights are neglected and that minority issues develop into conflicts. The efficiency of the State structure is a powerful tool for providing the appropriate conditions for minority rights to be respected and for accommodating ethnic issues.

What are the tools for good governance provided by federalism as a constitutional device? Primarily those to be discussed in "International Munich Federalism Days 2017": financial arrangements, distribution of powers, inter-governmental relations, possibly judicial adjudication. Others and less studied have a particular relevance for ethnically diverse societies: a) cross-border cooperation allows to cooperate across borders and this especially benefits groups that are divided by such borders; b) forms of citizens' participation in decision-making increase the feeling of inclusiveness and allow decision-makers to take into due account minorities' claims.

### **CONCLUSION: FEDERALISM AS AN ACCELERATOR**

Federalism is all the more an effective constitutional tool to prevent and resolve conflicts the more it is understood and used as an instrument to promote good governance and inclusion instead of ownership and exclusion. Federalism reminds of an accelerator. If its focus is on governance, that's what it promotes, and the same goes if focus is on separation. There is no recipe as to the right balance of such instruments, but awareness of the consequences of each of them is often lacking and this represents a danger.

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